

5. *Are there provisions of the Act that raise additional requirements or issues to be addressed in this proceeding, notwithstanding preemption, including but not limited to:*
- a) *The impact of resale pricing standards as set forth in the Act on SWB's and GTE/Contel's Resale Tariffs filed pursuant to PURA95 §3.2532 offering a 5 percent or 0 percent discount off selected telecommunications services;*
  - b) *The impact of the Act on SWB and GTE/Contel Resale Tariffs filed pursuant to PURA95 §3.2532 offering only limited services for resale, rather than offering "for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers."*
  - c) *The impact of the Act on the terms and conditions of SWB's and GTE/Contel's tariffs, restricting (whether under PURA95 or otherwise) who may purchase out of the resale tariffs;*
  - d) *The impact of the Act on the terms and conditions of SWB's and GTE/Contel's tariffs, with respect to PURA95 §3.2532(d)(3-6); and*
  - e) *The impact of the Act on the terms and conditions of SWB's and GTE/Contel's tariffs, with respect to PURA95 §3.2532(f).*
  - f) *Does the Act prohibit any restrictions on the use of resale services?*

In response to the remaining certified issues, the Commission concludes that the Act has not expressly preempted any provision in PURA95 related to the approval of a flat-rated resale service tariff, including PURA95 §3.2532.<sup>7</sup> Nothing in the Act explicitly provides that Congress has "unmistakably ... ordained" that the new federal telecommunications statute alone will regulate the provision of flat-rated resale service, to the exclusion of state law regulating the provision of such service.<sup>8</sup> There is nothing in the federal statute which indicates congressional intent for federal law to completely supersede state law in this particular area of telecommunications regulation.

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<sup>7</sup> This conclusion also applies to those provisions in PURA95 which limit the purchase of services from a flat-rated resale tariff adopted pursuant to PURA95 3.2532(d) to only the holder of a service provider certificate of operating authority (SPCOA). See Docket Nos. 14654, 14836, and 14658, Preliminary Order at 7-8 (Nov. 9, 1995).

<sup>8</sup> In contrast, §602(a) contemplates express preemption of certain local laws in stating that a provider of direct-to-home satellite service shall be exempt from the collection or remittance of any tax or fee imposed by any local taxing jurisdiction on direct-to-home satellite service.

Under §252 of the Act, Congress has established a procedure by which a telecommunications carrier and an incumbent local exchange carrier *may* negotiate an agreement for the purchase of telecommunications services to be resold by the telecommunications carrier, resorting to mediation by a state commission if requested by any party to the negotiations. In the event that negotiations and/or mediation are not wholly successful, §252 also establishes a procedure by which any party to the negotiations may petition the state commission to arbitrate any open issues. Under the federal statute, the Commission must approve any such negotiated or arbitrated agreement pursuant to the express standards set forth in §252(e)(2) of the Act. The federal statutory standards for the approval of a negotiated agreement for the purchase of telecommunications services for resale purposes are less prescriptive than those for an arbitrated agreement for such services: for example, where a negotiated agreement does not need to comport to any specific pricing standard in the Act, an arbitrated agreement must reflect a wholesale rate, as defined in §252(d)(3). Although §252(e)(3) of the Act states that, with certain exceptions, nothing in the Act prohibits the Commission from establishing or enforcing other state law requirements in its review of this type of negotiated or arbitrated agreement (*e.g.*, service quality standards), the federal statute clearly requires any Commission approval of such an agreement to comport, at a minimum, to federal law requirements. In particular, an arbitrated agreement must meet the requirements of §251. One of those requirements -- that in §251(c)(4)(B) -- imposes a duty upon all incumbent local exchange carriers to not “prohibit, and not to impose any unreasonable or discriminatory conditions or limitations on the resale of” telecommunications service. In brief, while certain state law requirements *may apply* to the approval of such agreements, the federal law requirements specified in the Act *must apply*.

The federal statute’s procedures and requirements for negotiated and arbitrated agreements, however, are separate and distinct from the procedures and requirements imposed under state law for the purchase of services for resale. Stated another way, while the Act focuses upon negotiated and arbitrated resale agreements as the means by which telecommunications services are purchased by resellers, PURA95 focuses upon the establishment of flat-rated resale service tariffs as one means for obtaining some of those types of services. The parallel tracks established by federal and state law provide the competitor with an option as to how to proceed with purchasing service(s) for resale. It is noteworthy that, under the Act, a *request* made at the reseller’s discretion for the purchase of services

for resale triggers the negotiation/arbitration process. Nothing in the federal statute mandates that a negotiated or arbitrated agreement is the *only* means by which a competitor can purchase services for resale purposes.<sup>9</sup>

For instance, a reseller may decide to purchase a specific service under a tariff approved by the Commission in compliance with PURA95, rather than pursue the negotiation and/or arbitration options set forth in the federal statute. Such a choice may be dictated by the need for expediency or the desire to avoid the expenditure of funds necessary for the negotiation and/or arbitration process. On the other hand, given that the services available for resale under a Commission-approved flat-rated resale service tariff are restricted in scope or available only to certain entities, as well as priced at a set five percent discount, the reseller may instead choose to pursue the negotiation and arbitration route established under the Act, depending upon the reseller's identity, the type(s) of services it wishes to resell, and/or the venue in which it believes it can obtain the best price. In any event, a Commission-approved tariff comporting to PURA95 may serve as a "safety net" of sorts for competitors, if they choose to so use it.

The Commission's harmonization of state and federal law in this instance is consistent not only with PURA95 §1.404, but also with §261(b) of the Act. This federal statutory provision states that nothing in the federal statute shall be construed to prohibit any state commission from enforcing regulations prescribed prior to the federal statute's enactment if such regulations are not inconsistent (read: expressly preempted) by the Act. As stated earlier, a tariff approved in compliance with PURA95 can co-exist with the arbitration and negotiation process contemplated under the Act. Consequently, given the Commission's conclusions with respect to the remaining certified issues, it perceives no preemption obstacles which would impede going forward in this docket, so that the

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<sup>9</sup> Granted, under §252(f)(1) of the Act, a Bell Operating Company (BOC) has the discretion to seek Commission approval of a statement, in accordance with the requirements and standards of the Act, that specifies the terms and conditions it generally offers to a reseller. This statement of terms and conditions, however, does not supersede a tariff approved by the Commission pursuant to state law. The statement is separate and distinct from the tariff approved in compliance with the requirements and standards of PURA95, although--in some instances--the statement and the tariff may be identical in certain respects, or even one and the same. It is noteworthy that §252(f)(5) states that the existence of a BOC tariff in compliance with §252 does not relieve the BOC from the negotiation process outlined in the Act.

Commission may approve flat-rated resale service tariffs in compliance with PURA95 at the conclusion of this proceeding.

Although the Commission concludes the federal statute has no express preemptive effect upon this proceeding, it nonetheless finds that the Act impacts the inclusion of “resale prohibitions” in the flat-rated resale service tariff of an electing company in this proceeding. Under PURA95 §3.453(f)(2), the Commission must eliminate resale prohibitions from the tariff of an electing company with one million access lines or more when all prohibitions on the company’s provision of interLATA service have been removed. Section 601(a)(2) of the Act provides that any conduct or activity that was, prior to the enactment of the Act, subject to any obligations or restrictions imposed under the GTE Consent Decree is now subject to the obligations and restrictions imposed under the Act. Under the GTE Consent Decree, a GTE Corporation Operating Company (GTOC), such as GTE-SW, could not provide interLATA telecommunications services or own facilities used to provide such services, with one specific exception not relevant here. The Act, however, does not impose any such restriction upon a GTOC.<sup>10</sup> Therefore, given that the Act effectively supersedes the GTE Consent Decree pursuant to §601(a)(2), it appears that the condition precedent in PURA95 §3.453(f)(2) has occurred, as it applies to GTE-SW: “[the] removal of all prohibitions on [GTE-SW’s] provision of interLATA service.” Therefore, under PURA95, the Commission cannot approve any “resale prohibitions” in GTE-SW’s flat-rated resale service tariff in this proceeding.

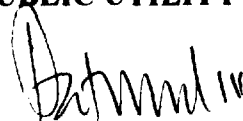
Rather than attempt to identify the scope and meaning of the term “resale prohibitions” in PURA95 §3.453(f)(2) in this Order, however, the Commission believes that the issue is best left for the parties to develop, both factually and legally, in the evidence proffered and the briefs filed in the hearing before the SOAH ALJ. Because the resolution of the scope and meaning of the term may impact issues in other proceedings, the Commission welcomes the benefit of a fully developed record on the matter prior to making a decision.

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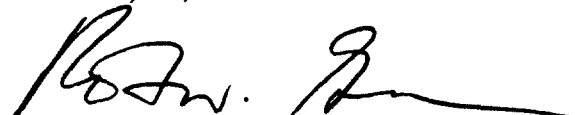
<sup>10</sup> In contrast, §271 of the Act requires a BOC to satisfy certain criteria before providing *in region* interLATA services.

SIGNED AT AUSTIN, TEXAS the 10<sup>th</sup> day of APRIL, 1996.


PUBLIC UTILITY COMMISSION OF TEXAS



PAT WOOD, III, CHAIRMAN



ROBERT W. GEE, COMMISSIONER



JUDY WALSH, COMMISSIONER

ATTEST:



PAULA MUELLER

SECRETARY OF THE COMMISSION

**Attachment IV**

**Order of Remand**

**PUC Docket No. 14659**

**Applications Of Southwestern Bell Telephone Company, GTE Southwest, Inc.  
And Contel Of Texas, Inc. For Usage Sensitive Loop Resale Tariffs Pursuant  
To PURA 1995 §3.453**

**RECEIVED**

APR 11 1996

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POLICY DEVELOPMENT

**PUC DOCKET NO. 14659**  
**SOAH DOCKET NO. 473-95-1210**

**APPLICATIONS OF SOUTHWESTERN  
BELL TELEPHONE COMPANY, GTE  
SOUTHWEST, INC. AND CONTEL OF  
TEXAS, INC. FOR USAGE SENSITIVE  
LOOP RESALE TARIFFS PURSUANT  
TO PURA 1995 §3.453**

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**PUBLIC UTILITY COMMISSION**

**OF TEXAS**

### **ORDER OF REMAND**

This Order of Remand serves three objectives: (1) to state the Commission's decisions with respect to certain principles integral to the determination of usage-sensitive rates, terms, and conditions; (2) to specify the issues which must be resolved on remand, for the purpose of determining usage-sensitive rates, terms, and conditions; and (3) to establish interim rates, terms, and conditions, subject to refund or surcharge without interest, pending the issuance of a final order.<sup>1</sup> A final order, including findings of fact and conclusions of law, will be issued after the remand proceeding is concluded and the Administrative Law Judge (ALJ) has issued a supplemental proposal for decision (PFD).<sup>2</sup>

#### **I. Decisions in Principle**

Under PURA95<sup>3</sup> §3.453(a), certain incumbent local exchange carriers (LECs) must file usage-sensitive loop resale tariffs. "Loop resale" is defined in §3.453(b) as "the purchase of the local distribution channel or 'loop' facility from the incumbent LEC for the purpose of resale to the end user customers." In §3.453(c)(1), the statute further provides that the Commission may approve only a usage-sensitive rate that recovers the total long-run incremental cost (LRIC) of the loop on an unseparated basis, plus an appropriate contribution to joint and common costs.

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<sup>1</sup> In issuing this Order of Remand, the Commission has considered the exceptions and replies to exceptions filed by the parties, including the late-filed exceptions of GTE Southwest, Inc. (GTE-SW) and the late-filed reply to exceptions filed by MCI Telecommunications Corporation (MCI).

<sup>2</sup> During the open meeting conducted on March 27, 1996, representatives of GTE-SW and Southwestern Bell Telephone Company (SWB) agreed to extend the deadline in this proceeding day-for-day until the Commission issues a final order adopting final rates. Open Meeting Tr. 110-111 (March 27, 1996).

<sup>3</sup> Public Utility Regulatory Act of 1995, Tex. Rev. Civ. Stat. Ann. art. 1446c-0 (Vernon Supp. 1996).

In its passage of PURA95, the Legislature plainly intended to promote resale-based competition in the telecommunications field, given its enactment of §3.453 and § 3.2532(d).<sup>4</sup> The promotion of such competition, however, is not the only goal of PURA95. The build-out provisions in §3.2531 require the largest potential competitors, *i.e.*, companies with an excess of six percent of the total intrastate switched access minutes of use in the most recent 12-month period, to construct facilities in order to provide local and other services. Furthermore, §§3.358, 3.359, and 3.401 create mechanisms for new telecommunications infrastructure investment in the state.

As a matter of policy, the Commission should encourage both facilities-based competition and nonfacilities-based (*i.e.*, resale) competition, in both urban and rural markets. The Commission's policies in this regard should allow for an equal opportunity to compete, for both large and small competitors, whether they are incumbents or new entrants in the market. Other long-standing Commission policies must be considered as well when addressing the issue of competition. Such policies include the preservation of universal service at affordable rates, the provision of just and reasonable rates that are neither preferential or discriminatory, and the allowance of an opportunity for a firm to earn a reasonable return on its investment. In addressing the issue of competition in the telecommunications field and developing sound policies for such, the Commission cannot blindly ignore the legacy of the policies and precedent it has adopted and implemented in the past.

For these reasons, the approval of usage-sensitive rates, terms, and conditions in this docket requires a careful contemplation and balancing of all of these considerations. The Commission's twin objectives should be both to promote facilities-based and nonfacilities-based competition in all areas in the state, as well as to permit the incumbent LECs to appropriately recover their costs in their provision of loops to competitors. Consistent with these overarching principles, the Commission reaches several conclusions in principle with respect to issues integral to the determination of usage-sensitive rates, terms, and conditions. This delineation of conclusions, however, is not necessarily exhaustive of every

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<sup>4</sup> PURA95 § 3.2532(d) establishes flat-rated resale service tariffs for incumbent LECs. This type of resale tariff is the subject of a pending proceeding, *Application of Southwestern Bell Telephone Company, GTE Southwest, Inc., and Contel of Texas, Inc. for Approval of Flat-Rated Local Exchange Resale Tariffs Pursuant to PURA 1995 §3.2532*, Docket No. 14658 (pending).



issue in this docket and does not address each recommendation in the PFD. Note: some of the matters addressed in this section of this Order require, to some degree, further consideration on remand, as specifically indicated in Section II. Except to the extent specified in Section II., the decisions in principle articulated in Section I. of this Order of Remand should not be addressed in the remand proceeding.<sup>5</sup>

1. *Types and Technical Specifications of Loops*--The incumbent LECs shall provide the following types of loops for resale: (a) 2-wire analog voice grade loops; (b) 4-wire analog voice grade loops; and (c) "dry" loops that are conditioned to transport digital signals at, a minimum, the transmission speed of Integrated Services Digital Network (ISDN). With respect to the latter type of loop, both PURA95<sup>6</sup> and the Commission's substantive rules<sup>7</sup> strongly encourage the statewide deployment of ISDN; if competitors are to be allowed to provide digital connectivity to end users, they must have access to conditioned loops for such purpose. Other types of loops--particularly DS-1 loops, DS-3 loops, and fiber loops used for SONET interface--fall well outside the concept of local service and, therefore, need not be available for purchase under an incumbent LEC's loop resale tariff. Currently, such loops may be purchased as private line services.

2. *Liability Provisions*--The incumbent LEC's loop resale tariff should include the following provision:

[The incumbent LEC] shall be indemnified and held harmless by the local service provider (LSP) against claims and damages by the LSP's customers arising from the provision of the LSP's services or equipment except those directly associated with the provision of local access service to the LSP, which is governed by other sections of the tariff.

3. *Loop Facilities Transport Service* --In the context of loop resale, loop facilities transport service is the service provided by the incumbent LEC to transport usage-sensitive local connection (USLC) loops to an LSP's switch station. The Commission finds that loop transport should be made available to LSPs on a fully unbundled basis.

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<sup>5</sup> Except as otherwise noted in this Order of Remand, all references to GTE-SW include Contel.

<sup>6</sup> PURA95 §§3.358(c)(1) and (c)(2); 3.403(b)(1).

<sup>7</sup> P.U.C. SUBST. R. 23.69.

4. *Multiplexing of Subscriber Lines*--The multiplexing of subscriber lines involves the interface or aggregation of numerous analog or digital lines to a channel transmitting at a higher speed or capacity over two copper pairs or fiber optic cable. The Commission finds that LSPs should be given flexibility in purchasing multiplexing equipment from the incumbent LEC and, in doing so, be allowed to specify multiplexing formats, so long as those formats meet industry standards. Multiplexing equipment not normally used by the incumbent LEC, however, must be provided to the LSP on a cost-recovery basis, e.g., a sale/leaseback arrangement or some other means. An incumbent LEC should not be required to purchase multiplexing equipment that is not normally used in its network without appropriate compensation.
5. *Meaning of "Usage Sensitive"*--The Commission interprets the term "usage sensitive," as used in PURA95 §3.453, to mean "capable of measuring minute differences." A measurement standard based upon minutes-of-use (MOU) would meet the definition of "usage sensitive" in §3.453. A per-call measurement standard would also meet the definition of "usage sensitive". Interpreting the term "usage sensitive" to encompass a measurement standard based on the time an LSP subscribes to an incumbent LEC's local loop for a particular end user (e.g., number of days per month) is inconsistent with the ordinary meaning of the term, as well as what the Commission believes the Legislature intended by the use of the term in §3.453.
6. *Measuring Loop Usage*--Measuring MOU may be costly if performed by the incumbent LEC. Also, if the incumbent LEC measures loop usage using a D4 channel bank, not only must the LSP install its own extra multiplexing equipment, but the use of the D4 bank will tend to impair signal quality. The Commission concludes that either self-reporting of minutes of use by the LSP or the employment of a usage proxy are two possible options until the incumbent LECs develop more efficient means of measuring actual usage. As indicated in Section II. of this Order of Remand, an issue on remand is whether, on final order, the Commission should adopt a MOU rate, which would be self-reported, or a rate based upon a proxy, until such time that SWB and GTE-SW develop more efficient means of measuring actual usage. For these reasons, there is no need to dictate a specific mechanism (e.g., D4 channel bank) by which an incumbent LEC must provide the

multiplexing function. If an LSP records the MOUs on its loops and self-reports such usage to the incumbent LEC for billing purposes, it may apply a factor to the number of originating MOUs to estimate the number of terminating MOUs on their loops. Any self-reported usage information shall be subject to periodic audits by the incumbent LEC and to true-ups arising from such audits.

7. *Method of Measurement*--To establish a monthly MOU rate, SWB shall perform a stratified sampling study in accordance with the guidelines specified in the testimony of Staff witness Dr. Tom Zhu. This study should employ a reasonable seasonal adjustment index, if possible. When its requisite number of its central offices have the necessary measurement capability, GTE-SW shall also perform such a study, in consultation with Dr. Zhu. These studies will yield reasonable approximations of statistically unbiased estimates of average traffic volume per line, thereby providing a basis upon which to set a tariffed rate per MOU for each of those companies.
8. *Minimum Rates*--If, on final order, the Commission ultimately adopts MOU rates rather than rates based upon a proxy, the incumbent LEC will be allowed to assess a minimum monthly charge per loop. The purpose of this minimum charge is to discourage LSPs from overprovisioning loops to their customers. The minimum rate should be designed so that it applies only in such circumstances, *i.e.*, the overprovisioning of loops.
9. *Determination of Costs to Develop Rates*

**SWB**

- a. *Power Investment, Building Modification Investment, and Building and Grounds Investment Factors*--An allocation of these types of investments predicated solely on the basis of dollars of investment in equipment required to provide a usage-sensitive loop is not appropriate.
- b. *Cable Fill Factor*--The cable fill factor recommended by the General Counsel for SWB should be employed.

c. *Cost Drivers*--P.U.C. SUBST. R. 23.91(c)(7) defines the term "cost driver" as "[a] specific condition, under which a basic network function (BNF) is provided, whose change causes significant and systematic changes in the cost of providing a BNF." Furthermore, P.U.C. SUBST. R. 23.91(f)(10)(A) specifies that LRIC studies for network access channels (*i.e.*, loops) should, at a minimum, account for variations in costs caused by variations in the density of a wire center, the size of a wire center, and distance. Even though the rate design for the loop resale tariffs will employ a statewide average rate, knowledge of the underlying cost structure of network access channels will increase the accuracy of the cost studies and will enable the Commission to revisit basic telecommunications services rate design issues in the future.

GTE-SW

a. *Maintenance/Repair Factor*--GTE-SW's maintenance/repair factor should be adjusted by a current cost factor to a booked cost factor. This adjustment takes into account that newer equipment will have less maintenance/repair costs on a per-unit basis, as compared to older equipment.

b. *Material Loading Factor*--The material loading factors that should be used to develop GTE-SW's loop resale costs are the same as those used in the cost studies filed pursuant to P.U.C. SUBST. R. 23.91.

c. *Jumper Wire Annual Charge Factor*--The appropriate annual charge factor applied to the jumper wire should be the intraoffice network cable equipment account factor, rather than the digital electronic switching equipment account factor.

d. *Cost Drivers*--P.U.C. SUBST. R. 23.91(c)(7) defines the term "cost driver" as "[a] specific condition, under which a basic network function (BNF) is provided, whose change causes significant and systematic changes in the cost of providing a BNF." Furthermore, P.U.C. SUBST. R. 23.91(f)(10)(A) specifies that LRIC studies for network access channels (*i.e.*, loops) should, at a minimum, account for variations in costs caused by variations in the density of a wire center, the size

of a wire center, and distance. Even though the rate design for the loop resale tariffs will employ a statewide average rate, knowledge of the underlying cost structure of network access channels will increase the accuracy of the cost studies and will enable the Commission to revisit basic telecommunications services rate design issues in the future.

10. *Appropriate Rate of Return*--P.U.C. SUBST. R. 23.91(f)(5) states that, in conducting a LRIC study for a BNF, a presumption of reasonableness exists when the incumbent LEC uses its most recent Commission-approved rate of return for purposes of establishing its cost of money. The rule further states that the incumbent LEC may overcome this presumption if it can justify the use of any other rate of return in its cost study. Neither SWB nor GTE-SW presented any such justification in this docket. Consequently, for GTE-SW, the appropriate rate of return for use in calculating its usage sensitive rate is 11.05 percent, as established in its most recent general rate case, Docket No. 5610.<sup>8</sup> For SWB, the appropriate rate of return is the midpoint in the range determined reasonable in its last general rate case, Docket No. 8585.<sup>9</sup> This midpoint, in the range from 10.49 to 11.36 percent, is 10.925, or 10.93 percent.
11. *Contribution*--As stated earlier, PURA95 states that an appropriate contribution to joint and common costs is a component of the usage-sensitive rate. Joint and common costs are real costs to the incumbent LEC and are required in the provision of services to LSPs, even though such costs may not be directly attributable to a specific basic network function or service. Many parties in this proceeding contend that the level of contribution in the usage-sensitive rate should be *de minimus*. The Commission concludes that such a rate, however, should recover a level of contribution that is more than *de minimus* because (a) joint and common costs are real costs to the incumbent LEC; (b) the maximization of resale-based competition is not the only consideration in establishing rates, terms, and conditions in the incumbent LECs' loop resale tariffs; and (c) the incumbent LECs must have a reasonable opportunity to earn a reasonable return on investment.

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<sup>8</sup> *Application of GTE Southwest, Inc. for a Rate Increase*, Docket No. 5610, Finding of Fact No. 41, 15 P.U.C. BULL. 1, 250 (Feb. 23, 1989).

<sup>9</sup> *Petition of the General Counsel to Inquire into the Reasonableness of the Rates and Services of Southwestern Bell Telephone Company*, Docket No. 8585, Finding of Fact No. 136, 17 P.U.C. BULL. 1045, 1775 (Jan. 10, 1991).

12. *Treatment of EUCL and Interstate CCL*--PURA95 §3.453(c)(1) states that "[t]he [C]ommission may only approve a usage sensitive rate that recovers the total long run incremental cost of the loop *on an unseparated basis*, plus an appropriate contribution to joint and common costs...." This provision contemplates the incumbent LEC's recovery of interstate costs associated with the local loop in the usage sensitive rate. This inclusion of interstate costs in the rate is justified because FCC regulations, on their face, do not permit the incumbent LEC to charge an LSP either the end user common line charge (EUCL) or the interstate carrier common line (CCL) charge, both of which are the means by which the incumbent LEC has historically recovered interstate costs associated with the local loop. To the extent, however, that an incumbent LEC obtains a waiver from the FCC that permits it to directly collect the EUCL and/or interstate CCL charges associated with the purchased local loop from the LSP, the usage-sensitive rate should be adjusted to eliminate any double-recovery. This adjustment for EUCL and CCL revenues should be made on a per line basis, rather than a weighted average.
13. *Municipal Franchise Fees*--The same municipal franchise fee applied to the incumbent LEC's other services will equally apply to services purchased under its loop resale tariff.
14. *Rate Design*--The Commission finds that the appropriate rate design for the usage-sensitive loop is a statewide average rate. A rate design that de-averages rates based on the underlying costs may diminish incentives to provide facilities-based competition, inhibit nonfacilities-based competition in rural areas, and impact incumbent LEC revenue streams currently used to support universal service. The Commission will be moving to a system in which universal service support mechanisms are made explicit to both the parties who pay for the support and those who receive such support.
15. *Selection and Changing of Carriers*--For purposes of addressing the selection and changing of carriers providing local service, the incumbent LECs' loop resale tariffs should mirror the rules of the Federal Communications Commission (FCC) with regard to the selection and changing of interexchange carriers (IXCs). The four methods specified in those rules reasonably balance the need to protect consumers against slamming, the need for ordering convenience, and the need to

avoid undue barriers to competition. Furthermore, SWB should delete its proposed \$100.00 unauthorized change charge from its loop resale tariff. Under §258(b) of the Telecommunications Act of 1996,<sup>10</sup> a telecommunications carrier that fails to properly verify a change in a subscriber's selection of a carrier and collects charges from that subscriber for service must reimburse the customer's authorized carrier for any revenues lost as a consequence of the slamming. The Commission finds that this provision in the federal statute provides adequate deterrence against slamming.

16. *Disconnection of Carriers*--An incumbent LEC should be required to promptly notify an LSP whenever it receives a disconnection order from one of the LSP's customers. This notification should facilitate the management of services, networks, and billing, thereby resulting in reduced expenses and fewer instances of slamming.
17. *Notice to Customers of Carrier's Cessation of Operations*--The Commission concludes that the provisions related to the discontinuation of service in PURA95 §3.2595 sufficiently address the issue of notice to customers of an LSP's cessation of operations.
18. *Miscellaneous Issues*--With the exception of the issue of dispute resolution, the Commission concurs in the conclusions reached in Section XIV of the PFD. The resolution of disputes involving technical publications variances will be governed by the recently enacted Telecommunications Act of 1996.

## **II. Issues on Remand**

On remand, the ALJ shall address the following issues:

1. *Types and Technical Specifications of Loops*--The issues on remand are: (a) can a combination of two 2-wire analog voice grade loops be provided by the incumbent LEC as the technical equivalent

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<sup>10</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. §§151 *et seq.*).

to a 4-wire analog voice grade loop, and (b) what parameters should apply to the provision of the unbundled "dry" loop that is conditioned to carry digital signals?

2. *Loop Facilities Transport Service*--The issues on remand are: (a) should an incumbent LEC's usage-sensitive loop resale tariff include rates, terms, and conditions for loop transport, or is the current availability of loop transport in the incumbent LEC's access tariffs sufficient?; and (b) if loop transport should be included in usage-sensitive loop resale tariffs, what are the appropriate rates, terms, and conditions for such?
3. *Usage-Sensitive Standard*--The issue on remand is: does a per-call measurement standard have any advantages over a MOU measurement standard?
4. *Proxy Rates Versus MOU Rates*--The issue on remand is: until the incumbent LECs develop more efficient means of measuring accurate usage, should the Commission adopt MOU rates, which would be based on self-reported MOU, or rates based upon proxies?
5. *Self-Reporting Procedures*--The issue on remand is: what specific self-reporting procedures should be used, in the event the Commission adopts MOU-based rates? These MOU reporting procedures should be detailed, using the percent interstate usage (PIU) procedures adopted in P.U.C. SUBST. R. 23.23(d)(6) and *Application of Southwestern Bell Telephone Company to Revise Section 2 of its Intrastate Access Service Tariff*, Docket No. 10127, 18 P.U.C. BULL. 1589 (April 12, 1993) as points of reference.
6. *Minimum Rates*--On remand, the issue is: if, on final order, the Commission determines that MOU rates should be adopted rather than rates based upon proxies, what is a reasonable minimum rate?



**7. *Determination of Costs to Develop Rates***

**SWB**

a. *Power Investment, Building Modification Investment, and Building and Grounds Investment Factors*--The issue on remand is: under P.U.C. SUBST. R. 23.91, what is/are the appropriate method(s) by which to identify the amount of SWB's power investment, building modification investment, and building and grounds investment that is incremental to the provision of a usage-sensitive loop?

b. *Cost Drivers*--On remand, SWB shall file a LRIC study for each type of loop it must offer for resale. In these studies, SWB shall calculate the LRICs for all of the following cost drivers and all combinations of cost drivers:

- Wire center density of up to 500 lines per square mile;
- Wire center density of more than 500 lines per square mile;
- Wire center size of up to 10,000 lines;
- Wire center size of more than 10,000 lines;
- Loop distance from 0 to 5,000 feet;
- Loop distance from 5,001 to 10,000 feet;
- Loop distance from 10,000 to 15,000 feet;
- Loop distance from 15,001 to 20,000 feet;
- Loop distance from 20,001 to 25,000 feet;
- Loop distance from 25,001 to 30,000 feet; and
- Loop distance of more than 30,000 feet.

**GTE-SW**

a. *Drop Wire Investment*--GTE-SW's current practice is to install a five-wire drop. The issues on remand are: (a) what are GTE-SW's loop costs if a two-wire drop is used; (b) what are they if a five-wire drop is used?

b. *Utilization Factor*--The issue on remand is: what is the appropriate utilization factor to apply in the network access channel cost studies used to support GTE-SW's loop resale tariff?

c. *Customer Operations Costs, Billing/Collection Costs, and Cashiering Costs*--Given that customer operations, billing/collection, and cashiering costs may be costs incurred in the provision of loop resale service to an LSP, the issue on remand is: what is the appropriate development and assignment of GTE-SW's customer operations, billing/collection, and cashiering costs associated with the provision of usage-sensitive loops to LSPs?

d. *Cost Drivers*-- On remand, GTE-SW shall file a LRIC study for each type of loop it must offer for resale. In these studies, GTE-SW shall calculate the LRICs for all of the following cost drivers and all combinations of cost drivers:

- Wire center density of up to 50 lines per square mile;
- Wire center density of between 51 and 1000 lines per square;
- Wire center size of up to 1,000 lines;
- Wire center size between 1,000 and 10,000 lines;
- Wire center size of more than 10,000 lines;
- Loop distance from 0 to 5,000 feet;
- Loop distance from 5,001 to 10,000 feet;
- Loop distance from 10,000 to 15,000 feet;
- Loop distance from 15,001 to 20,000 feet;
- Loop distance from 20,001 to 25,000 feet;
- Loop distance from 25,001 to 30,000 feet; and
- Loop distance of more than 30,000 feet.

8. *Contribution*--The issue on remand is: what is the usage-sensitive rate each loop required to be made available by the incumbent LEC, as specified in Section I in this Order of Remand, using the following levels of contribution to joint and common costs--ten percent, 20 percent, and 30 percent?

9. *USF*--Consistent with the principle that the usage-sensitive rate should not recover interstate costs recovered through the EUCL and interstate CCL, GTE-SW's usage-sensitive rate should not recover interstate costs otherwise recovered through the universal service fund (USF), which provides federal support to certain carriers for high-cost loops. The questions on remand are: (1) is such a conclusion with respect to federal USF support, based on the principle that there should be no double-recovery of costs, consistent with the requirement in §3.453(c)(1) which dictates that the

usage-sensitive rate should recover the total LRIC of the loop on an unseparated basis; and (2) to avoid the possibility of double-recovery, can GTE-SW simply not report, for USF purposes, the loops which it resells to LSPs?

10. *Universal Service Support*--The parties are requested to offer evidence for the purpose of structuring the permanent rates in this proceeding as statewide average rates which have explicit universal service support components reviewable in future Commission pricing and universal service dockets.
11. *Installation Charges, Non-Recurring Costs, and Installation Procedures*--The issues on remand are: (a) what is the installation cost of each type of loop which SWB must provide, pursuant to this Order of Remand, to LSPs; (b) what is the appropriate rate design to recover the cost of the installation of these types of loops, *i.e.*, should there be a rate differential between the LSP's residential and business end users; and (c) should SWB's and GTE-SW's proposed installation procedures, terms, and conditions be modified?<sup>11</sup>
12. *Selection and Changing of Carriers*--The issues on remand are: (a) if slamming occurs and the incumbent LEC incurs costs to switch the end user back to its original telecommunications provider, should the LEC be allowed to recover those costs from the offending LSP, and (2) if so, what are the appropriate rates, terms, and conditions associated with the recovery of such costs?
13. *Federal Preemption*--The issue on remand is: has the Telecommunications Act of 1996 preempted, or impacted in any fashion, this proceeding? In addressing this issue, guidance is provided in the recently issued Order on Certified Issues in *Application of Southwestern Bell Telephone Company, GTE Southwest, Inc., and Contel of Texas, Inc. for Approval of Flat-Rated Local Exchange Resale Tariffs Pursuant to PURA 1995 §3.2532*, Docket No. 14658.

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<sup>11</sup> GTE-SW's installation charges are not in dispute.

**14. *Impact on Competition in Texas***--The issues on remand are: (a) what is the impact of the loop resale tariff upon Texas' competitive posture; (b) how do the loop resale rates in Texas compare with those which have been established by other states; and (c) will the level of loop resale rates in Texas discourage competitors or other industries from moving to Texas or expanding Texas operations?

### **III. Interim Rates**

To ensure that entry by LSPs into the local exchange market is not delayed, the Commission establishes interim loop resale rates for SWB and GTE-SW. These interim loop resale rates are calculated using information found in the interim rate proposal submitted by General Counsel, which appeared as Attachment No. 4 to the PFD. The specifics of the calculations are discussed below. In the interim, loop resale rates shall be monthly flat rates, rather than being based on measurement of usage.

In the interim, any additional services needed to connect the loop to the LSP, such as cross-connects, multiplexing, and transport, shall be purchased pursuant to other available tariffs. The change of carrier provisions in the interim tariff should follow the decision in principle stated in Section I. of this Order of Remand. In addition, treatment of interstate EUCL revenues and CCL revenues shall follow the decision in principle stated in Section I. of this Order of Remand. No adjustment for the receipt of interstate USF revenues shall be made in the interim.

Within ten days of the entry of this Order, SWB and GTE-SW shall file interim loop resale tariffs consistent with this Order of Remand. The interim rates in those tariffs shall be subject to surcharge or refund, without interest, after final rates are approved by the Commission. No later than ten days of the filing of an interim tariff, the Legal Division of the Office of Regulatory Affairs shall file comments recommending approval, modification, or rejection of the individual sheets of the proposed tariff. Responses to the Legal Division's recommendations shall be filed no later than 15 days after the filing of the interim tariff. Legal Administration shall by letter approve, modify, or reject each tariff sheet, effective the date of the letter, based upon the materials submitted to the Commission under the procedure established in this Order of Remand.

Interim tariff sheets shall be deemed approved and shall become effective upon the expiration of 20 days after the date of filing, in the absence of written notification of modification or rejection by Legal Administration. In the event any sheets are modified or rejected, the incumbent LEC shall file proposed revisions of those sheets, in accordance with Legal Administration's letter, within ten days after the date of such letter, with the review procedures and deadlines set forth above to apply again. Copies of all filings and of Legal Administration's letter(s) under this procedure shall be served on all parties of record.

*Calculations for SWB*---For SWB, the interim monthly flat rate for loop resale shall be 115 percent of its statewide-average LRIC, as determined by General Counsel for interim rate purposes.

The rate for an 8 db loop is calculated as follows:

\$ 7.90	(5% annual statewide-average contribution for SWB from Attachment No. 4 to the PFD)
x 20	
\$ 158.00	(100% annual statewide-average LRIC for SWB)
x 115%	
\$ 181.70	(100% annual statewide-average LRIC for SWB plus 15% contribution)
÷ 12	
\$ 15.14	(interim monthly rate for SWB before rounding)

The interim monthly rate for SWB's 8 db loop as calculated above shall be rounded, resulting in a monthly rate of \$15.00.

The rate for a 5 db loop is calculated as follows:

\$ 8.95	(5% annual statewide-average contribution for SWB from Attachment No. 4 to the PFD)
x 20	
\$179.00	(100% annual statewide-average LRIC for SWB)
x 115%	
\$205.85	(100% annual statewide-average LRIC for SWB plus 15% contribution)
÷ 12	
\$ 17.15	(interim monthly rate for SWB before rounding)

**The interim monthly rate for SWB's 5 db loop, as calculated above, shall be rounded, resulting in a monthly rate of \$17.00.**

Installation charges for SWB shall be \$60.00 for the first line to an end-user's premises and \$44.00 for each additional line. These amounts are the interim installation charges recommended by General Counsel, based on Staff witness Mr. Nelson Parish's testimony.<sup>12</sup>

*Calculations for GTE-SW*--For GTE-SW, the interim monthly flat rate for loop resale shall be 115 percent of GTE-SW's statewide-average LRIC, as determined by General Counsel for interim rate purposes and adjusted to reflect an 11.05 percent rate of return rather than a 9.5 percent rate of return.

On April 1, 1996, General Counsel filed a memorandum that showed the calculation of the interim rate for GTE-SW based on the principles discussed above. The calculation as shown in that memorandum is as follows:

\$ 12.63	(5% annual statewide-average contribution for GTE/Contel from General Counsel's April 1 memorandum. This number reflects the costs shown on the non-redacted version of Attachment No. 4 to the PFD, adjusted for an 11.05% ROR.)
x 20	
\$252.60	(100% annual statewide-average LRIC for GTE/Contel)
x 115%	
\$290.49	(100% annual statewide-average LRIC for GTE/Contel plus 15% contribution)
÷ 12	
\$ 24.21	(interim monthly rate for GTE/Contel before rounding)

**The interim monthly rate for GTE-SW's loop, as calculated above, shall be rounded, resulting in a monthly rate of \$24.00.**

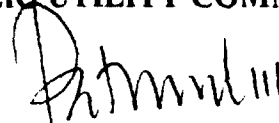
Installation charges for GTE-SW shall be those business service charges specified in Section 13 of GTE-SW's Texas General Exchange Tariff. Installation charges for Contel shall be those business service charges specified in Schedule No. A-5 of Contel's Telephone Rate Schedules and Telephone Service Regulations for Telephone Service in the State of Texas.

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<sup>12</sup> GC Ex. 8 at 16.

SIGNED AT AUSTIN, TEXAS the 10<sup>th</sup> day of APRIL, 1996.

PUBLIC UTILITY COMMISSION OF TEXAS



PAT WOOD, III, CHAIRMAN



ROBERT W. GEE, COMMISSIONER



JUDY WALSH, COMMISSIONER

ATTEST:



PAULA MUELLER  
SECRETARY OF THE COMMISSION

**Attachment V**

**PUC Substantive Rule 23.91**



**§23.91 Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services.**

- (a) **Application.** This section shall apply to DCTUs with annual revenues from regulated telecommunications operations in Texas of \$100 million or more for five consecutive years. An incumbent local exchange carrier that is not a Tier 1 local exchange company as of September 1, 1995, at that company's option, may adopt the cost studies approved by the commission for a Tier 1 local exchange company.
- (b) **Purpose.** This section shall be used to determine the long run incremental costs incurred by DCTUs in the provision of telecommunications services. The costs determined in this section shall not be used to determine a company's revenue requirement during a proceeding pursuant the Public Utility Regulatory Act of 1995, §3.210 or §3.211.
- (c) **Definitions.** The following words and terms when used in this section shall have the following meaning unless the context clearly indicates otherwise.
  - (1) **Ancillary Services** — The category of basic network functions (BNFs) (as defined in paragraph (2) of this subsection) that provide for certain activities that either support or otherwise are adjuncts to other BNFs or finished services. This category of BNFs consists of three subcategories of BNFs: Billing and Collection; Measurement; and Operator Services.
    - (A) **Billing and Collection** — The subcategory of BNFs that provide for the function of compiling the information needed for customer billing, preparing the customer bill statement, disbursing the bill and collecting the customer payments.
    - (B) **Measurement** — The subcategory of BNFs that provide the functions of assembling, collating and transmitting end office switch recorded call data (occurrence and duration).
    - (C) **Operator Services** — The subcategory of BNFs that provide for the provision of a number of live or mechanized assistance functions to aid customers in the following ways: obtaining customer telephone number, street address and ZIP code information (directory assistance); providing new telephone numbers or explanatory information to callers who dial numbers which have been changed or disconnected (intercepts); providing assistance to customers in completing operator handled toll or local calls (collect, credit card, third party, station-to-station or person-to-person); checking busy lines to make sure the line is not out of service (busy line verification); and interrupting busy lines (busy line interruption). These Operator Services are provided to end user customers as well as local exchange and interexchange carriers.
  - (2) **Basic network function (BNF)** — A discrete network function, which is useful either as a stand-alone function or in combination with other functions, for which costs can be identified.
  - (3) **Capital costs** — The recurring costs that result from expenditures for plant facilities that are capitalized. The annual capital costs consist of depreciation, cost of money, and income taxes.
  - (4) **Categories of BNFs** — All BNFs shall fall into one of four categories of BNFs. The categories are: Network Access (as defined in paragraph (18) of this subsection); Switching and Switch Functions (as defined in paragraph (20) of this subsection); Dedicated and Switched Transport (as defined in paragraph (10) of this subsection); and Ancillary Services (as defined in paragraph (1) of this subsection).
  - (5) **Common costs** — Costs that are not directly attributable to individual cost objects. For the purposes of this section there are three types of common costs: general overhead costs; costs common to BNFs; and costs common to services.
    - (A) **General overhead costs** — Costs incurred in operating and managing the company that are not directly attributable to BNFs or services.
    - (B) **Costs common to BNFs** — Costs incurred in the provision of BNFs that can not be directly attributed to any one BNF individually but only to a category or subcategory of BNFs collectively.